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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS SANCHEZ-BARAJAS,

Defendant and Appellant.

H033908

(Santa Clara County
Super. Ct. No. CC598695)

The trial court convicted defendant Carlos Sanchez-Barajas of felony child abuse (Pen. Code, § 273a, subd. (a))¹ with personal infliction of great bodily injury (§ 12022.7, subd. (a)). Defendant was placed on probation for four years with the condition that he serve one year in county jail. Defendant subsequently moved to modify the terms of probation to avoid mandatory deportation by the federal government. Defendant appeals from the trial court's denial of the motion. We will affirm the court's order denying defendant's motion to modify probation.

BACKGROUND

Defendant agreed to a *Bunnell* submission, or "slow plea," and submitted the issue of his guilt to the court on the basis of specified documentation. (See generally *Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 604-606.) Defendant waived his right to a jury

¹ All further unspecified statutory references are to the Penal Code.

trial in exchange for the promise that he not be sentenced to state prison. The court found defendant guilty of violating section 273a, subdivision (a), inflicting, or willfully causing or permitting, physical pain or mental suffering on a child, with personal infliction of bodily injury (§ 12022.7, subd. (a)). On June 19, 2008, the court suspended imposition of sentence and placed defendant on probation for four years with the condition, *inter alia*, that he serve one year in county jail.²

On August 29, 2008, defendant filed a motion to modify probation. At a hearing on September 16, 2008, defense counsel took the matter off calendar. On January 16, 2009, defendant filed a second motion to modify probation. This motion was heard on February 5, 2009. Defendant sought to reduce his jail term by five days, to 360 days, to avoid mandatory deportation under federal law. A lawful permanent resident is subject to mandatory deportation if convicted of an “aggravated felony.” (See generally 8 U.S.C. §§ 1227(a)(2)(A)(iii), 1228(c).) The term “ ‘aggravated felony’ ” includes any “crime of violence . . . for which the term of imprisonment [is] at least one year.” (8 U.S.C. § 1101(a)(43)(F); see also 8 U.S.C. § 16 [defining “crime of violence”].)

Defendant argued that the modification was in the interests of justice. Defendant emigrated from Mexico to the United States in 1999 and became a legal permanent resident in 2005. His ex-wife and two children live in the San Jose area and his children are United States citizens. Defendant held a steady job prior to his incarceration and submitted a letter from his employer that promised continued employment with the company. The job would allow him to make regular child support payments. Defendant stressed that deportation would render him unable to provide for his family financially and that his special needs son, in particular, needs his support. Defendant offered to

² The record in this case does not include the facts of the underlying offense, the information, or the minute orders pertaining to the plea or to defendant’s conviction. On the court’s own motion, we augmented the record to include the June 19, 2008 minute order documenting the terms of probation.

waive credits and serve a full year in custody as long as the record reflected a sentence of less than one year.

The prosecution opposed any modification. The prosecutor argued that defendant's ex-wife would prefer that defendant be deported. Defendant's ex-wife did not want defendant's money or defendant to have any involvement with their son, the victim of the underlying offense.

The trial court denied defendant's motion on February 19, 2009. The court stated, in full: "This is the motion to reduce or modify the defendant's jail sentence to 360 days from 365 days. And I have considered the arguments that were presented at the last hearing, and in my view, the showing does not really, in my view, justify modification of the sentence and the motion is denied."

DISCUSSION

Defendant contends that the court abused its discretion in denying defendant's motion to modify the terms of probation; specifically, the court failed to consider the facts presented, conducted no reasoning or analysis, and ruled against the interests of justice. In response, the Attorney General contends that the trial court had no authority to modify the jail term. Even if the court had the requisite authority, the Attorney General argues, denial of the motion was appropriate.

"The court shall have authority at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence." (§ 1203.3, subd. (a); accord *People v. Howard* (1997) 16 Cal.4th 1081, 1092-1093 ["During the probationary period, the court retains jurisdiction over the defendant [citations], and at any time during that period the court may, subject to statutory restrictions, modify the order suspending imposition or execution of sentence (§ 1203.3)."].) Our Supreme Court has expanded on this statutory authority: "A change in circumstances is required before a court has jurisdiction to extend or otherwise modify probation. . . . 'An order modifying the terms of probation *based upon the same facts* as

the original order granting probation is in excess of the jurisdiction of the court, for the reason that there is no factual basis to support it.’ ” (*People v. Cookson* (1991) 54 Cal.3d 1091, 1095, quoting *In re Clark* (1959) 51 Cal.2d 838, 840.)

We consider first the Attorney General’s contention, supported by *People v. Mendoza* (2009) 171 Cal.App.4th 1142 (*Mendoza*), that the trial court lacked the authority to modify the jail term. In *Mendoza*, this court considered whether the superior court has authority to reduce a county jail term imposed as a condition of probation, if the probationer is still on probation but has already served the term. (*Id.* at pp. 1145-1146.) We concluded that the superior court has no authority to create a “legal fiction” for immigration purposes by modifying a jail term that was “ ‘intended, imposed, and served.’ ” (*Id.* at pp. 1153.)

However, it is unclear from the record in this case when defendant completed the jail term imposed—i.e., when the term was “served.” It appears that at the time defendant brought the motion to modify he was still in custody and serving the one year sentence. The February 19, 2009 minute order states, in contrast, that defendant was present “out-of-custody” when the court ruled on the motion. We need not consider this further, however, as we find that even if the court had the authority to modify the jail term, defendant presented no legal basis for the requested modification.

In denying defendant’s motion, the court referred to a lack of “showing” to justify modification. We concur with the trial court’s implicit determination that defendant failed to show a change of circumstances justifying modification of the jail term. Defendant was informed of, and acknowledged, possible immigration consequences at the time of his slow plea: as part of the plea colloquy, defendant affirmed his understanding that if he was not a United States citizen, “conviction could result in deportation, exclusion from admission or denial of citizenship.” The mandatory deportation law was in effect at the time of defendant’s plea and he does not point to any

intervening change in the applicable law. Nor does defendant point to any relevant change in citizenship status or personal life that would compel a probation modification.

Defendant's reliance on *People v. Allen* (1975) 46 Cal.App.3d 583, disapproved of by *People v. Segura* (2008) 44 Cal.4th 921, 935 is misplaced. In that case, the defendant pleaded guilty or no contest to several drug-related offenses and, pursuant to the plea agreement, was placed on six years probation with three consecutive one year jail terms. (*Id.* at pp. 585-587.) One year into probation, after receiving reports that the defendant was a "model prisoner" and had completed his high school education while in custody, the court reduced one of the jail terms by three months. (*Id.* at pp. 587-588.) The appellate court's affirmance of the trial court's order focused on the court's inherent authority to make post-judgment adjustments favoring the probationer, even if contrary to a plea agreement. (See *id.* at pp. 589-591.) The California Supreme Court expressly disapproved this holding in *People v. Segura*, *supra*, 44 Cal.4th at page 935. Moreover, the case before us is distinguishable on the facts. This case involves a defendant who gravely injured his own child in a crime of violence and seeks modification only to avoid immigration consequences arising from his conviction.

Defendant nevertheless argues the court abused its discretion "because it made no effort to consider the facts . . . and conducted no reasoning or analysis whatsoever in support of its decision." In general, we presume that the trial court was aware of, and followed, the applicable law. (*In re Julian R.* (2009) 47 Cal.4th 487, 499.) "[T]hus, when 'a statement of reasons is not required and the record is silent, a reviewing court will presume the trial court had a proper basis for a particular finding or order.' " (*Ibid.*) We see no reason to disregard these principles in this case. Contrary to defendant's contention, the trial court was not required to specify its reasons for denying the motion. Section 1203.3 requires the trial court to "state the reasons" for its decision only "[i]f the sentence or term or condition of probation *is modified*[" (§ 1203.3, subd. (b)(1)(A),

italics added.)³ Furthermore, there is no indication that the trial court did not fully and fairly consider defendant's motion. The court considered defendant's brief with supporting documents and heard argument from both defense counsel and the prosecution. Following argument on the motion, the court adjourned to give further consideration to the matter and issued its decision two weeks later.

In sum, there is no indication the superior court misapplied the law, disregarded its responsibilities, or abused its discretion in refusing to modify the terms of probation. "Although variously phrased[.]" the standard of review for abuse of discretion "asks in substance whether the ruling in question 'falls outside the bounds of reason' under the applicable law and the relevant facts [citations]." (*People v. Williams* (1998) 17 Cal.4th 148, 162.) We discern no manifest abuse of discretion in the court's denial of defendant's motion.

³ In *People v. Downey* (2000) 82 Cal.App.4th 899, 910, defendant's authority, the appellate court remarked upon the court's "lengthy and reasoned explanation" in the context of a trial court's decision to reinstate probation, not a decision declining to modify the terms of probation.

DISPOSITION

The court's February 19, 2009 order denying defendant's motion for modification of probation is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

MCADAMS, J.